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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/673,161	09/30/2003	Kurt A. Dobbins	026215-00004	9818
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ARENT FOX PLLC 1050 CONNECTICUT AVENUE, N.W. SUITE 400 WASHINGTON, DC 20036			EXAMINER KEEFER, MICHAEL E	
			ART UNIT 2154	PAPER NUMBER
			MAIL DATE 08/17/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/673,161	Applicant(s) DOBBINS, KURT A.	
	Examiner Michael E. Keefer	Art Unit 2154	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 30 May 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-24 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-24 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 30 May 2007 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. This Office Action is responsive to the Amendment filed 5/30/2007.

Claim Objections

2. Claim 24 is objected to because of the following informalities: The claim is missing a period at the end. Appropriate correction is required.

Double Patenting

3. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

4. **Claim 19** is provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 21 of copending Application No. 10/673156. Although the conflicting claims are not identical, they are not patentably distinct from each other because Claim 21 of '156 anticipates claim 19 of the instant application. (See *In re Goodman*)

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Regarding **claim 19 of the instant application**, Claim 21 of 10/673156 discloses:

A method of according preferred transport to content, the method comprising:

identifying any portion of the content for transmission; (reading the content identifier in an instance of network transmission)

determining transport parameters based on the identified content for transmission; (determining a type of transmission service to accord the electronic data based on information in the content identifier)

transmitting the identified content for transmission based on the determined transport parameters; and (transmitting at least part of the electronic data according to the determined type of service)

providing the identified content for transmission to a user. (providing the at least part of the content to a user requested location)

5. **Claims 1 and 19** are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 3 of U.S. Patent No. 7016956.

Although the conflicting claims are not identical, they are not patentably distinct from each other because Claim 3 of the '956 patent anticipates claims 1 and 19 of the instant application.

Therefore, Claim 3 of US 7,016,956 anticipates **claims 1 and 19** as follows:

A method of according preferred transport to a content, the method comprising:

identifying a content-aware node (subscriber, which must be aware of content in order to send and receive it), the node (subscriber) being contained in the transmission path of the content; (the subscriber receives the content, so is inherently in the transmission path, see step 4. the subscriber is identified in step 2)

identifying any portion of the content to be transmitted; (Step 3, the parts of the packet that are going to be compared must be identified in order to be compared)

determining transport parameters based on the identified node and from the identified content (Steps 2&3); and

transmitting at least part of the content based on the determined transport parameters. (step 4)

Claim Rejections - 35 USC § 102

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. Claims 1-6, 9-14, 17-20, and 22-24 are rejected under 35 U.S.C. 102(b) as being anticipated by Dobbins et al. (US 2002/0029260), hereafter Dobbins.

Regarding claims 1-6, 9-14, and 17-18, Dobbins discloses:

A method of according preferred transport to content, the method comprising:

identifying a content aware node, the node being contained in a transmission path of the content; (Fig. 3A, the subscriber is identified, the subscriber being the source of the content or destination node for the content to be delivered to, see [0040] "the subscriber is identified dynamically utilizing the identification and challenge routines as in Fig. 4". The subscriber is inherently a content aware node, as it must be aware of content in order to send it.)

identifying any portion of the content to be transmitted; ("The application or service requested by the packet is compared with the policies", in order to compare the application or service requested by the packet, it must first be identified.)

determining transport parameters based on the identified content aware node and the identified content for transmission; (Fig. 3A, item 336 obtains the subscriber context based off of the subscriber profile, see [0042] "the subscriber context corresponding to the identified subscriber is obtained from a policy directory 225")

transmitting the at least part of identified content for transmission based on the determined transport parameters; and providing the identified content for transmission to a user requested location. (Fig. 3A, item 348 processes the packet according to the policies determined based on the subscriber profile, which includes the step of transmitting the

packet. See [0043], where policies from the subscriber context are applied to the packet/content.)

2. (New) The method according to claim 1, wherein the content is electronic data. (A packet is electronic data)

3. (New) The method according to claim 1, wherein the content is media content. (A packet is media content)

4. (New) The method according to claim 1, wherein the content aware node is selected from a group consisting of an application specific node, a client node, a server node, and a network communication node. (The subscriber is a client node and a network communication node)

5. (New) The method according to claim 1, wherein transmitting at least part of the content includes: transmitting the content with the determined transport parameters over a peer- to-peer network. ([0027] discusses determining peer-to-peer file transport capabilities: "A subscriber may be prevented from accesses another subscriber's computing device")

6. (New) The method according to claim 1, wherein identifying the content for transmission enables control on distribution of the content by at least one selected from a group consisting of an owner of the content, a peer-to-peer network, and a service provider. (The service providers control subscriber's distribution of the content.)

9. (New) The method according to claim 1, wherein the determined transport parameters include at least one selected from a group consisting of a

predetermined amount of bandwidth, a quality of service, a transmission attribute, an amount of packet loss, and an amount of jitter. ([0029] discloses transport parameters that may be enforced by the system)

10. The method according to claim 9, wherein the determined transport parameter is a predetermined amount of bandwidth. ([0027] discloses different bandwidth levels of bandwidth provision)

11. (New) The method according to claim 1, wherein identifying the content aware node and identifying the content for transmission occurs at the time an application is accessed. ([0029] indicates that packets are steered dynamically, i.e. at the time the application is accessed.)

12. (New) The method according to claim 1, further comprising transmitting unidentified content based on transport parameters different from the determined transport parameters. ([0047] indicates that packets going to an unsecured port are given different transport parameters)

13. (New) The method according to claim 13, wherein the different parameters comprise a lower level of transport service. ([0047] indicates that the lowest level of service may be given to unsecure packets.)

14. (New) The method according to claim 1, further comprising: authenticating the distribution allowed for the content, and authorizing only the allowed distribution for the content. ([0047] indicates that unauthenticated packets are dropped (the last two lines)

17. (New) The method according to claim 1, wherein the user requested location is a device. (Fig. 1 subscribers 130 or Service providers 140)

18. (New) The method according to claim 17, wherein the device is one selected from a group consisting of personal computer, a minicomputer, a microcomputer, a mainframe computer, a personal digital assistant, a hand-held device, a set-top box, a cellular telephone, an IP telephone, a videophone, a videogame machine, a television, and a personal video recorder. (Fig. 1 subscribers 130 or Service providers 140)

Regarding **claims 19-20 and 22-24**, Dobbins discloses:

Claim 19 is substantially the same as claim 1, therefore the grounds of rejection for claim 1 stated above apply.

20. (New) The method of claim 19, wherein identifying the content occurs at the time an application is accessed. ([0029] indicates that packets are steered dynamically, i.e. at the time the application is accessed.)

22. (New) The method according to claim 19, further comprising: authenticating the distribution allowed for the content, and authorizing only the allowed distribution for the content. ([0047] indicates that unauthenticated packets are dropped (the last two lines)

23. (New) The method according to claim 19, wherein the user requested location is a device. (Fig. 1 subscribers 130 or Service providers 140)

24. (New) The method according to claim 23, wherein the device is one selected from a group consisting of personal computer, a minicomputer, a

microcomputer, a mainframe computer, a personal digital assistant, a hand-held device, a set-top box, a cellular telephone, an IP telephone, a videophone, a videogame machine, a television, and a personal video recorder. (Fig. 1 subscribers 130 or Service providers 140)

Claim Rejections - 35 USC § 103

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claims 7-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dobbins as applied to claim 1 above, and further in view of Yamanaka et al. (US 6757283), hereafter Yamanaka.

Dobbins discloses all the limitations of claims 7-8 except that the identified item is a multi-element content tag.

The general concept of using a multi-element content tag to control content distribution properties is well known in the art as taught by Yamanaka. (See Fig. 40 and Fig. 41)

It would have been obvious to one of ordinary skill in the art at the time of the invention to combine Dobbins with the general concept of using a multi-element content tag to control content distribution properties as taught by Yamanaka in order to allow for a finer granularity of control (i.e. to be able to steer/manage not only a single content, but a category of content files).

1. Claims 15 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dobbins as applied to claims 1 and 14 above, and further in view of Jennings et al. (US 2002/0099842), hereafter Jennings.

Regarding claim 19, Yamanaka discloses:

wherein generating the flow information for the content further comprises:
retrieving a transport profile corresponding to the content tag from at least one selected from a group consisting of an external database, a look up table, and a Uniform Resource Locator (URL) serving agent. (Fig. 1, the policies are found in database 120)

Dobbins discloses all the limitations of claims 16 and 19 except for including geographic restrictions.

The general concept of using geographic restrictions to limit content distribution is well known in the art as taught by Jennings. (See [0137]-[0139])

It would have been obvious to one of ordinary skill in the art at the time of the invention to combine Dobbins with the general concept of using geographic restrictions to limit content distribution as taught by Jennings in order to enable the content owner to control who views its content with more granularity. (Jennings [0039])

2. Claim 21 is rejected under 35 U.S.C. 103(a) as being unpatentable over Dobbins as applied to claim 19 above, and further in view of Milton (US 2002/0059120).

Dobbins discloses all the limitations of claim 21 except for wherein transmitting the identified content for transmission includes: transmitting the content over a network in which clients and servers are distributed such that an

owner of the content does not own the server element on which the content is stored.

Milton discloses transmitting content over a network in which clients and servers are distributed such that the owner of the content does not own the server element on which the content is stored. (See Fig 1, [0023]-[0025]. Media Access Provider 140 stores the content and the Media Content Owner 160 merely gives permission to the MAP to store the content for distribution to authorized users. Thus, MAP 140 is one of the possible service providers in Fig. 1 of Dobbins)

It would have been obvious to one of ordinary skill in the art at the time of the invention to combine Dobbins with Milton in order to allow a user to access his or her set of media contents by using any web-enabled device. (Milton [0009])

Response to Arguments

3. Applicant's arguments filed 5/30/2007 have been fully considered but they are not persuasive.

Summary of Applicant's Arguments

- A. Applicant argues that the objection to the drawings should be withdrawn.
- B. Applicant argues that the objection to the claims should be withdrawn.
- C. Applicant argues that the rejection of Claim 1 under 35 USC 101 should be withdrawn.
- D. Applicant argues that the obvious type double patenting rejection of claim 1 in view of Dobbins should be withdrawn in view of the amendment of Claim 1.

E. Applicant argues that the rejection of claim 1 under 35 USC 102(b) should be withdrawn in view of the claim amendments.

Response to Applicant's Arguments

A. The examiner withdraws the objection to the drawings, therefore applicant's arguments are moot.

B. The examiner withdraws the objection to claim 1, but objects to new claim 24 for the reasons stated above.

C. The examiner withdraws the rejection of claim 1 under 35 USC 101 therefore applicant's arguments are moot.

D. The examiner maintains the double patenting rejection of claim 1 for the reasons stated above.

E. The examiner maintains the rejection of claim 1 under 35 USC 102(b) in view of Dobbins for the reasons stated above.

Conclusion

4. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Jasen et al. (US 2007/0079005) discloses tagging information for various types of quality of service (abstract).

Acharya et al. (US 7209977) discloses a method and apparatus for content-aware web switching.

Spooren et al. (US 2002/0002543) discloses a system and method for online copyright management. Specifically, a method is described to 'tag' digital content with

an icon and hyperlink that can be clicked in order to obtain rights to the content according to rules. (Abstract)

Colby et al. (US 6006264) discloses a content aware flow-switch.

5. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael E. Keefer whose telephone number is (571) 270-1591. The examiner can normally be reached on Monday through Friday 5:30am-2pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nathan Flynn can be reached on (571) 272-1915. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 2154

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

MEK 8/10/2007


DAVID M. FERN
SUPERVISORY PATENT EXAMINER